RAILWAY RATE THEORIES OF THE INTERSTATE COMMERCE COMMISSION. II

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IV. Distance

Distance as a factor in rate making is of importance only as it affects the cost of transportation. It is, of course, never true that costs are in exact proportion to the distance, but it is true that the greater the distance freight is transported, the greater is the cost of carrying it. We might, therefore, have rightly considered distance under the heading of cost of service. But owing to the emphasis which the Commission has often placed upon it as an element in rate making, as well as because there is a respectable school of economists and publicists who believe that distance should play a larger part in rate making than railway men are inclined to accord to it, we shall here give it separate treatment.

The original members of the Commission, very soon after they had begun their work, made it plain that they had no intention of adopting distance as the sole measure of the reasonableness of a given

rate. In the case of the *La Crosse Manufacturers' & Jobbers' Union v. the Chicago, Milwaukee & St. Paul Railway Company et al.*[1], complaint was made to the general effect that rates on certain commodities were not in proportion to the mileage covered by their transportation. To this complaint the Commission made answer as follows: —

> It is a matter of general history that when the act to regulate commerce was pending in Congress the mileage basis was suggested but not adopted. Many circumstances sometimes enter, and sometimes compel a carrier to make rates on one line proportionately less than are made on another. The volume of business, the strength of competing forces, the direction of traffic, the convenience of exchange, the relations of carriers to each other, and a multitude of other circumstances, have or may have an important bearing.

While thus disclaiming any desire to put in force a distance tariff, the Commissioners have made it equally plain that distance as an element in fixing railway charges must not be disregarded by carriers, and that upon the railroads rests the responsibility of justifying departures from the rule that rates should increase with the distance travelled. "Distance is not always the controlling element in determining what is a reasonable rate," say the Commissioners, "but there is ordinarily no better measure of railroad service in carrying goods, than the distance they are carried." [2]

The Commissioners do not, of course, mean by this statement that rates should ordinarily be *proportional* to distance. To fix rates in this fashion would be to disregard the very obvious fact that the terminal expenses remain the same whether the freight is transported one mile or many miles. The general

[1] 1 I. C. C. Rep. 629; 2 I. C. R. 9.

[2] Abbott v. East Tenn., Va. & Ga. R'y. Co., 3 I. C. C. Rep. 225; 2 I. C. R. 609.

rule to be applied in determining the extent to which distance should cause an increase in the railway rate has been repeatedly set forth by the Commissioners and it shows very clearly that these gentlemen attach importance to distance only so far as it reflects cost of service. An explicit statement of the fact that distance as an element in transportation owes its importance to cost of service is found in a case [1] where the complainants urged in behalf of their claim the general principle accepted by the Commission that the ratio of rates should decrease with the increase of the distance travelled. In answer to this the Commissioners said: —

> This principle is generally acknowledged when the rates are based upon distance and cost of handling and are not affected by other modifying conditions, and its justice arises from the very obvious fact that the expense of transportation does not increase in proportion to the distance, many of the elements which unite to make up the cost of handling freight being the same whether the terminal points be more or less widely separated.

When we turn to a consideration of the cases in which the Commission has made use of distance as an important, if not controlling, element in fixing rates we find that these cases naturally fall into two groups: (1) Those in which the general rule is followed, that as distance increases the aggregate charge should increase but the ton-mile rate should decrease; (2) those in which the importance of distance as a factor in rate making is admitted, but the general rule stated above is modified to meet certain conditions and circumstances.

[1] Lincoln Board of Trade v. Burlington & Missouri River R. R. Co. et al., 2 I. C. C. Rep. 147; 2 I. C. R. 95. Cf. the similar statement in W. B. Farrar v. East Tenn., Va. & Ga. R'y. Co., 1 I. C. C. Rep. 480.

1. *Rates Increase with Distance*

A case which may be regarded as typical of the entire group is that of *The Commercial Club of Omaha v. The Chicago, Rock Island & Pacific Railway Company et al.*[1] Omaha and Kansas City, it was shown, were competitors for the trade of the west, southwest and northwest. Because of this competition these cities received the same rates to and from most points in their common territory. For this reason it was claimed on behalf of Omaha that she should receive the same rates to certain points in Texas as were given to her rival, altho Omaha is about 195 miles farther from these Texas towns than is Kansas City and traffic to and from Omaha must pass through Kansas City.

The Commissioners did not discuss the question as to whether Omaha and Kansas City were entitled to the same rates to other points but they held that the existence of such equality in rates constituted no reason why distance should be ignored in fixing rates to the Texas towns. They declared that carriers had "no right to disregard distance and natural advantages, in order to bring about commercial equality," and they cited their earlier decisions to show that this had always been the attitude of the Commission. Some of the complainants had admitted that the rate to Kansas City from the Texas towns was a reasonable one and the Commissioners said that, if this were so, "the charge of the same rate for the continuous haul 195 miles farther on to Omaha would make no allowance for the expense and value of that additional service."

[1] 6 I. C. C. Rep. 647.

Competition of the same sort was found to exist [1] between Cincinnati and Louisville in the distribution of merchandise to points in the south and southwest. Cincinnati complained that differential rates of from two to ten cents per 100 pounds were given to Louisville as compared to Cincinnati and that this constituted an undue preference in favor of Louisville since the two towns were rival distributing centers.

The carriers defended the differentials on the following grounds: (1) Cincinnati being on the north bank of the Ohio river, the expense of crossing the river, sometimes on toll bridges, made it justifiable to charge her higher rates than were given to Louisville on the south bank of the river. (2) The distance from Cincinnati to the south and southwest was greater than from Louisville. (3) Cincinnati enjoyed a better freight rate than did Louisville on goods brought from the east and could therefore afford to pay a higher rate on these articles when they were sent forward for distribution.

The first point made by the defendants had to do directly with cost of service and, altho it was recognized by the Commissioners as legitimate, we need not now consider it. Concerning the second argument, the Commissioners said: —

> It is undoubtedly true that there are many instances in which the element of distance may be overcome by other considerations, but it is equally true that this Commission has always insisted that distance was an important element in the determining of rates, and *in the absence of other influences a controlling element.* No circumstances are shown by the complainants which should eliminate that element from consideration, or counteract its influence.

The Commissioners did not recognize the third argument made by the defendants as legitimate, but

[1] Freight Bureau of Cincinnati Chamber of Commerce v. Cin., N. O. & Tex. Pac. R. R. Co. et al., 7 I. C. C. Rep. 180.

their answer nevertheless serves to emphasize the importance attached to distance as a determining factor in this case.

> We do not give much weight to this consideration, as Cincinnati is entitled to the benefits of location; the fact that it enjoys exceptional advantages in one respect is no reason why it should be subject to discrimination in some other respect. If Cincinnati by reason of its situation can obtain a better rate than Louisville upon merchandise which it brings in for distribution to this southern territory, that is the good fortune of Cincinnati and affords no excuse for an unjust rate upon merchandise when shipped out. There is, however, a degree of justice in the claim that the same rule which is applied in favor of Cincinnati in respect to incoming freight should be applied against it on outgoing freight and that if it obtains the cheaper freight rates because of being situated near the source of its supplies, it ought in the same manner to pay a higher rate by reason of the fact that it is further from the territory in which it sells.

In spite of the emphasis placed on distance, it will be noticed that the Commission is careful to consider it, in both the above cases, as merely one element in the cost of transportation.

The famous Eau Claire case [1] is of interest to students of railway rates chiefly for other reasons than those we are now considering. But it offers a good illustration of the importance which the Commission is inclined to attach to distance and to the natural advantages of location as elements in rate making.

With reference to distance the defendants had put forth the claim that Eau Claire was paying a lower rate for the transportation of lumber than were the Mississippi river towns, La Crosse and Winona, "in proportion to their respective distances from the common market," which in this case was certain cities on the Missouri river. Since her ton mileage

[1] Eau Claire Board of Trade v. C. M. & St. P. R. R. Co. et al., 5 I. C. C. Rep. 264; 4 I. C. R. 65.

rates were less, Eau Claire, it was said, had no reason to complain. To this the Commissioners replied as follows: —

> The doctrine that transportation charges should be in proportion to the distance between different points, when these distances are greatly dissimilar, has never been advanced by the railroads or recognized by the Commission. It may be the rule to which tariff construction will some time approximate, but there is no opportunity for its application under the present conditions. The fixing of a rate for a thousand miles at twice the sum prescribed for half the distance would be most arbitrary and intolerable. . . . The whole practice of rate making is opposed to the principle of exact proportion, and even in theory there is little reason for its adoption. But distance, nevertheless, is an ever present element of the problem of rates, and not unfrequently a controlling consideration. Where all the distances brought into comparison are considerable and the difference between them relatively small, we shall expect substantial similarity in their respective rates unless other modifying circumstances justify a disparity.

Probably most of the cases in which the Commission has felt obliged to insist upon the recognition of distance as an element in rate making have arisen under the fourth section of the original act to regulate commerce which contains the well-known long and short haul clause. Carriers have advanced a great variety of considerations to show that they should be relieved from the operation of this section. The Commission has invariably taken the position that upon the carrier falls the burden of proving that dissimilar circumstances and conditions exist in the case of the long haul which make it necessary to charge less than for the short haul. In the absence of such dissimilar circumstances and conditions the element of distance must be considered as a controlling factor. This is made clear in the case of *The Farrar Lumber Company v. Southern Railway Company et al.*[1], where the complaint was to the effect that rates on lumber

from Dalton, Georgia, to certain points in Virginia and West Virginia were higher than to other points further distant on the same line. The carriers pleaded competition as a reason for making the low rates on the long distance traffic. The Commissioners, after investigation, decided that the plea was not warranted under the circumstances and said: —

> The rate per ton-mile is not always the measure of a reasonable rate and rigidly applied would make distance alone the gauge for transportation charges, but it is always valuable as affording a basis of comparison for relative rate burdens.

Even when the conditions surrounding the long haul are dissimilar from those present in the case of the shorter haul, they may not be such as to warrant the carriers disregarding altogether the question of distance. In the case of *S. Marten v. The Louisville & Nashville Railroad Company* [2], complaint was made that higher rates were charged for transporting lumber from certain small places in Tennessee to Detroit, Michigan, than were charged from Nashville to Detroit, tho the points in question were from 23 to 100 miles nearer Detroit than was Nashville. The carriers defended the lower rates from Nashville on the basis of both rail and water competition. Particular emphasis was placed on the competition by rail, and the defendants seemed to think that the decision of the U. S. Supreme Court in the Troy case (168 U. S. 144) had made it unnecessary to consider the element of distance where competition existed. The Commissioners admitted that competition existed at Nashville, but said that the water competition "would scarcely be a potent factor if the rates were somewhat higher"; and as to the rail competition they said that the defendants made the rate at Nash-

[1] 11 I. C. C. Rep. 640.

[2] 9 I. C. C. Rep. 581.

ville and " other rail carriers there simply follow that rate." A decision of the United States Supreme Court [1] was quoted to show that competition to be relied upon must " be not artificial or merely conjectured but material and substantial."

As to the justice of the carriers' claim that distance might be utterly disregarded whenever it was shown that competition existed, the Commission quoted with approval one of its early decisions in which its chairman, Judge Cooley, had said that " while the act does not require all rates to be proportional [to distance] it nevertheless makes the element of proportion an important one when the rates from any locality are to be determined." The application of this principle to the case under consideration is stated as follows: —

> Under these circumstances, the rule that after substantial dissimilarity of circumstances and conditions has been shown, the longer distance rate cannot in any case or to any extent be considered by way of comparison in determining whether or not the shorter distance rate is unreasonable or unduly prejudicial, particularly when as, in this case, competition and other compulsory conditions are not found to justify the whole disparity between the shorter and longer distance rates, would be to reject a most appropriate and necessary test of the reasonableness and justice of railway charges. It seems to us that in a case involving shorter distance charges higher than those to and from long distance points, the carrier cannot rightfully claim justification for a greater dissimilarity in the rates than may be indicated by the ascertained dissimilarity in circumstances and conditions.

This case and the Eau Claire case both show that the Commission is inclined to attach much importance to distance as a measure of the reasonableness of rates from two or more competitive points whenever these competitive points are in the same territory and are about equally distant from a common market.

[1] Louisville & Nashville Railroad Company v. Behlmer, 175 U. S. 648.

2. *Modifications of the distance principle*

Altho laying much emphasis on the general rule that the aggregate rate continues to increase as the distance covered in transportation increases, while the ton-mile rate constantly grows less, the Commissioners are willing to admit that this rule cannot always be applied even in those cases where distance itself is not to be ignored as an element in rate making.

One instance in which "the rule that the rate per ton-mile must be less for the greater distance" need not apply is where competition with a water route (or a railroad not subject to the act) is present in the case of the short haul, but not present in the case of the long haul.[1] Such instances are less frequent than those in which the competition exists in case of the long haul, but they are occasionally found.

In such instances the Commission has held that competition in the case of the short haul may make the rate unusually low, "often too low to be treated as a fair criterion for points beyond." The railroad having a long mileage to a given point may be met by a railroad having a much shorter mileage, and setting the rate which must be met if the longer road would share the business.

> When the given point is passed [the longer road] may fairly increase its charges with some consideration of the absolute distance travelled by its own lines from the originating point and in a ratio more rapid than the proportionate charges would have otherwise shown had it been able to grade its rates continuously throughout its line. The same effect is at times produced by water transportation, competition, and other controlling causes.[2]

[1] Business Men's Association of the State of Minnesota v. C., St. P., M. & O. R'y. Co., 2 I. C. C. Rep. 52; 2 I. C. R. 41.

[2] Lincoln Board of Trade v. Burlington & Missouri River R. R. Co. et al., 2 I. C. C. Rep. 147; 2 I. C. R. 95.

In determining whether or not the general rule should be held applicable we must also consider, say the Commissioners, the extent of the traffic and the character of the country traversed.[1] The ratio of rates charged through sparsely settled districts cannot decrease in proportion to the distance without depriving the carrier of necessary revenue; a region whose interests are wholly agricultural does not offer the possibilities of tariff reduction that is afforded by regions which are largely fed by mineral resources, quarries, and manufactures.

The Commission has also decided that tho mileage is an element of importance in making rates, the principle that the ton-mile rate decreases with the distance travelled "cannot as a rule be considered as a test in railroad operations in case of local rates," [2] and local rates need not necessarily correspond with the division of the joint through rate over the same line.[3]

It has also been held that whenever a comparison is made between distances varying greatly in length, the ton-mile rate in one case need not necessarily be regarded as a measure of the reasonableness of the rate in the other case. That this is the Commission's point of view was shown by its utterances in the Eau Claire case, but is more fully brought out in the case of the *Board of Railroad Commissioners of the State of Kansas v. Atchinson, Topeka & Santa Fe Railway Company et al.*,[4] a case which is peculiar in this respect, that the principle which the complain-

[1] Ibid.

[2] Business Men's Association of the State of Minnesota v. C. & N. W. R'y Co., 2 I. C. C. Rep. 73; 2 I. C. R. 48.

[3] H. McMorran and E. B. Harrington v. Grand Trunk R'y Co. of Canada et al., 3 I. C. C. Rep. 252; 2 I. C. R. 604.

[4] 8 I. C. C. Rep. 304.

ants wished to have applied in one instance they were unwilling to see made applicable in the other matter made the subject of dispute.

The complaint was (1) that lower ton-mile rates were given from the Kansas grain fields to Galveston, Texas, than were given on grain shipments to Kansas City and St. Louis, and (2) that lower ton-mile rates were given on Kansas grain sent to the Atlantic seaboard than on that sent to the Gulf ports which were the natural points of export for Kansas grain. The Kansas Commissioners asked that the same ton-mile rates be given to Kansas City and St. Louis as were given to Galveston, and that in turn the Galveston rate be not higher than the rates to the Atlantic seaboard. Concerning the Kansas City and St. Louis rates the Interstate Commerce Commissioners said: —

> Distance is undoubtedly a factor, and perhaps ought to be a much more important factor, in the determination of rates, but in the present case where the distances from the grain fields of Kansas to Kansas City, St. Louis, and Galveston vary from 100 to 1000 miles, any attempt to adjust the rates on grain to those cities upon the sole basis of the rate per ton per mile would be impracticable.

The Commissioners were also unwilling to admit the claim of the complainants that the Galveston rates should be made as low as those to the Atlantic ports.

> If a lower rate per ton-mile is made toward the east than toward the south, it is for the purpose of enabling the same grain to reach the same foreign markets by a different route and through different intermediate markets. The grain producer of Kansas has a satisfactory rate to the foreign market through Galveston. Can it be claimed that he is injured by a rate which gives him two routes instead of one to the ultimate market and two intermediate markets instead of one?

The reader has doubtless observed that in all these cases in which the Commission has emphasized dis-

tance as an influential factor in the determination of a rate, it has been because differences in distance seemed to express differences in the cost of service. Tho it may not be so obvious in cases where the distance principle has been modified or held to be not the controlling factor, the Commissioners have nevertheless had the cost of service principle in mind. The cases mentioned have had to do either with local rates, where costs of handling made the rates disproportionately high, or with low rates which were forced on the carrier by the competition of other carriers, either rail or water. A little reflection will show that the low rates in these latter cases have been determined by the cost of conducting the business by the cheaper route. Viewed from purely an economic standpoint it may be questioned whether the more expensive route should have been allowed to participate in the traffic under such circumstances. Over this matter, however, the Interstate Commerce Commission has had no control. The act to regulate commerce was enacted by a body of men who believed in giving full scope to the principle of competition and the Federal courts have fully sustained them in this position, even in cases where the Commission has felt that competition was unwarranted.

V. Natural Advantages of Location

The question as to how far, in the making of rates, recognition should be given to the natural advantages possessed by a given place for the production or marketing of certain commodities has received much discussion by the Commission, and some of its most important decisions have been based upon the principle here involved. The practice of the railroads has

often been to ignore these natural advantages; at other times the carriers have attempted to equalize them. This result, tho sometimes due to competition between the railroads themselves, has been due more often to competition between markets or between places of production. The carrier leading to a certain market or from a certain center of production has felt pressure to make rates as low as, or lower than, those given to competing centers of trade or production. This concession by the carrier has in turn led to efforts on the part of other places to induce the roads serving them to reduce rates so as to meet this competition. The final result has oftentimes been that the carriers have entered into arrangements whereby they agree to equalize the advantages of competing towns by fixing the rates in inverse ratio to the natural advantages of these towns, enabling all competing localities to market their products at the same prices at the same or different points of distribution.

The Interstate Commerce Commission has always been slow to admit the claim of the railroads that it was necessary and proper to make such rates as would equalize the natural inequalities of competing points and put them all on an equal footing in the common market. "A place is entitled to its natural advantages," say the Commissioners, "and a carrier may not deprive it of these advantages which fairly belong to it and because of which investments have been made at this point for the purpose of carrying on production in a more profitable manner than could be done elsewhere." [1]

A little reflection will show that the principle of making rates which recognizes the right of a place

[1] Imperial Coal Company v. Pittsburg & Lake Erie Railroad Company et al., 2 I. C. C. Rep. 618; 2 I. C. R. 436.

to its natural advantages is nothing more than a corollary of the cost of service principle. Other things being equal, a place having natural advantages for the production of a given commodity will produce that commodity and will be able to undersell other places, unless the carrier charges more for transportation from this point to the common market than is charged from competing points of production. Cost of production must, of course, include the cost of transportation and if a place which possesses advantages for the production of a commodity is nevertheless at a disadvantage as compared to its competitors, owing to greater distance from the market, its apparent advantages are offset by the greater cost of reaching the market. To allow a railroad to make higher charges from the more distant point under such circumstances is quite a different matter from acknowledging the carrier's right to make such charges when there is no greater cost of transportation.

The Commission has been consistent in its application of the principle that a place is entitled to the full advantage to be derived from a favorable geographical situation, but has insisted that this must not be construed to mean that a place is entitled to monopolize a given market, or to raise prices in that market above the cost of securing commodities elsewhere. In other words, natural advantages mean differential advantages, not monopoly advantages. The cases coming before the Commission which afford an illustration of the application of this principle may be divided into four classes: (1) Where the natural advantages are due to lower costs. (2) Where they are due to a shorter distance covered in transportation. (3) Where group rates are involved. (4) Where the natural advantages result from competition.

1. *Natural advantages due to lower costs*

In the case of the *Boston Chamber of Commerce v. the Lake Shore & Michigan Southern Railroad Company et al.*[1], the petitioners asked that the railroads from the west be required to make the same rates on goods transported from Chicago and other western points to Boston when these goods were intended for domestic consumption as when intended for exportation. To understand the case fully, it must be said that, in an earlier case [2] which had come before the Commission, Boston exporters had asked that their city be given the same rates on goods intended for export as were given to New York and had urged that unless this were done Boston would lose its export trade. The Commissioners, for reasons not necessary to relate here, had made this concession to Boston. The Boston Chamber of Commerce was now using the concession as a basis for demanding that the same rates should be made on *all* commodities sent to Boston, whether intended for exportation or for domestic consumption. The argument of the petitioners was that the cost of transporting the commodities was the same, regardless of their use, and that the carriers made no such distinction between domestic and export traffic at New York, Philadelphia, and other places.

The Commissioners refused to allow the request of the petitioners and declared that cost of service was not the main consideration in fixing rates. "The element of cost of service which may at one period have been recognized as controlling in fixing rates has long ceased to be regarded as the sole or most important factor for that purpose."

[1] 1 I. C. C. Rep. 436; 1 I. C. R. 754. [2] 1 I. C. C. Rep. 24.

The real grounds for making lower rates to New York than to Boston, said the Commissioners, are the natural advantages possessed by the former place over those possessed by the latter.

If differences in the condition of traffic to two or more points exist which materially affect the cost or value of the service, it would scarcely be reasonable to require a carrier to disregard these differences and make good to every community the disadvantage of situation or other disadvantages.

Altho the Commission denies the validity of the cost of service principle in this case when applied to the question of relative rates on domestic and export traffic, it will be noted that New York's advantage of situation as compared to that of Boston is shown to rest on differences in the cost of transporting goods to the two cities. This is brought out more fully when the Commission recites the points in which New York's situation is declared to be superior to that of Boston: (1) There is more switching involved at Albany in the case of Boston traffic. (2) The heavy grades of the Boston and Albany railroads necessitate smaller trains. (3) The cars are detained longer in Boston than in New York. (4) The distance from Albany to Boston is 56 miles greater than to New York. (5) The volume of business to Boston is smaller and " the universally accepted principle of railroad transportation that a very large traffic can be profitably conducted at lower rates than a relatively smaller traffic " applies. (6) Competition by way of the Great Lakes, the Erie Canal, and the Hudson river exists in the case of New York and compels the carriers to accept a lower rate to that city than they would be willing to accept in the absence of such competition.

All of these points, with the exception of the last, have to do with differences in the cost of service.

Together they give New York a decided advantage over Boston, and according to the Commissioners they are " physical facts constituting inequality which the carriers by rail are not required to make good to the less favored locality at their own expense."

The low rates given to Boston on her export traffic were declared to constitute an exception to the ordinary rate and to be a distinct *concession* on the part of the carriers to put Boston exporters on an equality with their competitors at New York, Philadelphia, and Baltimore.

We have already observed, under the heading of " Distance," that in the *Eau Claire lumber case* [1], the Commissioners held that, Eau Claire being about the same distance from her market, the Missouri river towns, as were her competitors, La Crosse and Winona, it was incumbent on the carriers to consider distance as an element to be taken into account in determining the relative rates from these competing points of production But the main thing emphasized by the Commission in its decision was the fact that Eau Claire had such natural advantages for producing and shipping lumber that she could produce and market this commodity at less cost than could her competitors and that the system of rates in force deprived Eau Claire of these natural advantages in order that competing localities might meet her on equal terms in the common market. The favorable situation enjoyed by Eau Claire is thus described by the Commission: —

Eau Claire appears to be adapted by location and in other respects for the manufacture and sale of lumber: it has a natural booming ground or place for the safe storage of logs, cheap transportation

[1] Eau Claire Board of Trade v. C. M. and St. P. R'y. Co. et al., 5 I. C. C. Rep. 264; 4 I. C. R. 65.

from the stump to the mills, proximity to the timber, and locations suitable for mills and yards. Being situated nearer the pine forests, the sources of timber supply, and at the confluence of two rivers which penetrate those forests, the Eau Claire and Chippewa, it appears to have natural advantages over its neighboring competitors [La Crosse and Winona]. . . . After lumber is in the raft, the cost of its transportation by water down the Mississippi is less than for the same distance by rail; but, including the rafting and preceding expenses, the testimony is to the effect that lumber can be shipped from Eau Claire by rail direct to Missouri river markets at as little, if not less, cost than it can be floated to Mississippi river points [La Crosse and Winona] and thence transported by rail to those markets.

The long controversy between the roads as to what differences in the rates on lumber from these competing towns should prevail had been referred by the roads to a gentleman named Bogue, who had been called upon to act as arbiter in the dispute. The decision rendered by Mr. Bogue was in accordance with the principle suggested by his own question: "What rate will enable each line party to this arbitration to place its fair proportion of lumber in the territory under consideration?" This, say the Commissioners, is equivalent to asking, what rate is necessary to equalize the relative disadvantages of location possessed by La Crosse and Winona as compared to Eau Claire? That this was also the understanding of the carriers is shown by the statement of the traffic manager of the St. Paul road that

primarily the object of the Bogue award was to place each line in a position to carry its fair share of the Missouri river lumber, and further to place each manufacturing locality upon an even footing with its competitors . . . . If Eau Claire could produce lumber cheaper than Winona or La Crosse, the latter points were to have a lower rate so as to enable them to compete.

The principle thus applied in arbitrating the dispute did not meet with the approval of the Commissioners. They said: —

We are not to be understood as endorsing this principle. On the contrary, we consider it radically unsound. That rates should be fixed in inverse proportion to the natural advantages of competing towns with a view of equalizing commercial conditions as they are sometimes described, is a proposition unsupported by law and quite at variance with every consideration of justice. Each community is entitled to the benefits arising from its location and natural conditions, and any exaction of charges unreasonable in themselves or relatively unjust by which those benefits are neutralized or impaired contravenes alike the provisions and the policy of the statute.

The Commission therefore ordered such a reduction in the lumber rates from Eau Claire as should cause these rates to exceed those from La Crosse and Winona by not more than $2\frac{1}{2}$ cents per 100 pounds. The selection of this particular differential was admitted to be more or less arbitrary and was left subject to correction. But the principle involved was that the rates should be such as to preserve for Eau Claire her natural advantages for securing and handling lumber, and should impose upon her shippers no higher rates in sending this forward to market than were justified by a consideration of the relative distances of Eau Claire, Winona, and La Crosse from the common markets.

In two cases,[1] brought before the Commission by the freight bureaus of Cincinnati and Chicago against certain southern and western roads, and heard together, complaint was made that the roads running south from the Ohio river had so arranged their rates on manufactured goods as to favor the merchants in eastern seaboard territory (north of the Potomac river and east of the Appalachian mountains) and to give to them an " undue and unreasonable preference or advantage " over the merchants in central territory

[1] Freight Bureau of Cincinnati v. Cin. N. O. & Pacific R'y. Co.; Chicago Freight Bureau v. L. N. A. & C. R'y. Co. et al., 6 I. C. C. Rep. 195; 4 I. C. R. 592.

(north of the Ohio river and lying between the Appalachian mountains and the Mississippi river). The evidence submitted showed that the mileage rates on articles in classes one to six inclusive, of the Official Classification, were higher from the eastern territory into the south than from the central territory. The defendant carriers offered as an excuse for this discrimination the existence of water and rail competition from New York, Philadelphia, and Baltimore, but the Commission discovered that the rates from the east were lower than were necessitated by water competition.

The real grounds of the discrimination were found to lie in an agreement made in 1878 by the roads running into the south, the consequence of a long and bitter struggle between the lines from the east to the south and those from the west to the south. In order to end this struggle the Southern Railway and Steamship Association had been formed, whose object was

> " to protect to eastern lines the business peculiar to their territory " and to the western lines the business relating to " their peculiar commodities," . . . in other words to secure to eastern lines the transportation of " articles manufactured in the east and in other countries and imported into eastern cities, embraced under the general terms of dry goods, groceries, crockery and hardware " and classified for the most part under the first four of the numbered classes, and to the western lines the transportation of " articles of western produce, comprising the produce of animals and the field " and embraced principally in the lettered classes.

As a result of this agreement rates were so fixed that on commodities produced mainly in western territory an advantage of at least ten cents per 100 pounds was given to the western lines over those from the east, while on articles peculiar to the east rates correspondingly low were permitted to the

eastern lines; all with a view to effect the announced object of the convention.

The Commissioners decided that however plausible may have been the pretext for such a method of adjusting rates in 1878, that justification no longer existed; for "it is estimated that the manufacture, in the central territory, of goods in the numbered classes has increased 100 per cent in twenty years." They were not willing to admit, however, that even in 1878 such an adjustment of rates was justifiable.

> It is not the duty of carriers, nor is it proper, that they undertake by adjustment of rates, or otherwise, to impair or neutralize the natural commercial advantages resulting from location or other favorable conditions of one territory, in order to put another territory on an equal footing with it in a common market. Each locality competing with others in a common market is entitled to reasonable and just rates at the hands of the carriers serving it and to the benefit of all its natural advantages.

The Commission, therefore, proceeded to order a reduction of the maximum rates on commodities in classes one to six, inclusive, from Chicago and Cincinnati to southern territory on the following basis: —

> The cost of freight in general per ton per mile on the roads south of the [Ohio] river appears to have been for the years named in the tables heretofore given about 25% on an average greater than the cost per ton per mile on the roads from Chicago to the river. The tonnage of the latter roads is also greater than that of the former. Rates from Cincinnati to southern territory from 33% to 50% higher per ton per mile than those from Chicago to Cincinnati and other Ohio river crossings will in our opinion make full allowance for these differences in cost and tonnage, and be at least not unreasonably low as maximum rates.

It appears from this statement that while the Commission concedes the right of a certain territory to the advantages arising from its favorable situation with reference to a market, the degree to which these

advantages are recognized is determined by a strict adherence to the cost of service principle.

Distance, competition, and cost of service are all made use of by the Commission in reading a decision *In the Matter of the Transportation of Salt from points in Michigan to Missouri River Points*,[1] but the emphasis placed on natural advantages of location makes it desirable to treat the case under this heading.

Salt producers in and around Detroit, Michigan, were inclined to complain of the combination of rates made between a boat line on Lake Michigan owned, or at least controlled, by the International Salt Company and the railroads running from Chicago. These combination rates enabled salt to be carried from its point of production near Ludington and Manistee, Michigan, to its markets on the Missouri river at rates lower than were given to the Detroit producers by the roads leading from that city. The boat line received from 30 to 33⅓ per cent of the through rate.

In spite of the suspicious elements involved in the case the Commission concluded, after investigation, that this apparently large percentage received by the boat line was justified by the cost of the service which it rendered in connection with the transportation of salt and by competitive conditions over which the roads at Chicago had no control.

The consideration which had most weight with the Commission in causing it to justify the existing rates was the fact that Ludington and Manistee apparently enjoyed natural advantages of production and location which enabled them to produce salt and ship it to the Missouri river at less expense than could producers at Detroit. (1) They were 250 miles nearer to the western markets. (2) They

[1] 10 I. C. C. Rep. 148.

had the advantage of a combined rail and water route, whereas Detroit must ship by an all-rail route. (3) Their costs of manufacturing salt were from 75 to 90 cents less per ton than those at Detroit. (4) They had the advantage of shipping by way either of Milwaukee or Chicago, and hence enjoyed competition on the part of the carriers leading from those cities.

The Detroit producers did not contend that the rates from Detroit were in themselves unreasonable, nor did the Commission so find them to be. The only way, therefore, in which Detroit could find relief was either by a voluntary reduction of rates on the part of carriers transporting salt from Detroit or by a condemnation of the division of the through rate awarded to the boat company. This latter alternative, however, would result in higher rates on salt from northern Michigan and this in turn would raise the price of salt to western consumers. The Commission said: —

> We do not conceive it to be our duty to take away from Manistee and Ludington the natural advantages which they enjoy and place them on an equity with Detroit in the manufacture and shipment of salt, in order that the price of that article in western territory may be increased, thereby enabling Detroit producers to do business at a profit in that market. It is the duty of the Commissioners to keep in view not only the rights and interests of producers, but those of the consumers as well.
>
> It can be no duty of the Commission to equalize natural advantages between localities through the adjustment of tariff rates. If any carrier desires to foster languishing industries situated on its line for the purpose of increasing the traffic of such carrier, it has, we think, the right to do so; and if the roads leading west from Detroit, with their connections, wish to make a rate whereby the salt producers of Detroit may be enabled to market their product on the Missouri river, they are so privileged; but this fact can in no wise affect the through rate from Manistee and Ludington, nor can it in any way determine the reasonableness of the division received by the boat line.

It is clear that the decision of the Commission in this case was based primarily on the principle of preserving the natural advantages of location. It is also clear that these natural advantages possessed by Ludington and Manistee were due to the fact that they could produce salt and put it in the Missouri river territory at less expense than could the salt producers in and about Detroit. But since their ability to do so was dependent upon the maintenance of a boat line on Lake Michigan and the granting to this boat line of a large percentage of the through rate, it may not be so clear to the reader that the granting of this large percentage was itself warranted by considerations affecting the cost of service. It may be explained, therefore, that the apparently large percentage received by the boat line covered a number of expense items other than transportation, such as dockage charges, pay for stowing and unloading, cooperage charges, insurance fees, and some minor items. In view of this extensive service performed, the share of the through rate received by the boat line did not appear to the Commissioners to be excessive and it further appeared that the ownership of the boat line by the International Salt Company grew out of the fact that otherwise there would have been a lack of adequate shipping facilities from northern Michigan points.

2. *Natural advantages due to distance*

Since distance is merely one element in the cost of transportation, it follows that a place which enjoys natural advantages of location because it is nearer the market or its source of supplies than are its competitors, will be able, other things equal, to produce

and market its products at less expense than can competing localities. The same reasons, however, which led us to treat distance as a separate factor in rate making make it desirable to consider separately those cases in which natural advantages arise from differences in distance.

The natural advantage which a short distance point has over a long distance one is so obvious that the cases illustrating this point can be very briefly treated.

In the case of *The Anthony Salt Company et al. v. The Missouri Pacific Railway Company et al.*[1], one question at issue was whether salt from Michigan might be given a rate to points in Texas as low as that given to salt-producing regions in Kansas. It was discovered that the rate on Michigan salt as far as St. Louis was determined by conditions over which the defendants had no control. The Commissioners therefore treated the rate to St. Louis as merely " an element of the original cost " of preparing the Michigan salt for market and in judging as to the proper relation between rates on Kansas salt and Michigan salt made the comparison between rates to the Texas points from St. Louis and Hutchinson, Kansas, respectively.

St. Louis is 743 miles from Ft. Worth, Texas; Hutchinson is 427 miles from the same point. If the common rate 35½ cents per hundred is the proper rate for the 427 miles haul from Hutchinson to Ft. Worth, then the excess of haul from St. Louis to Ft. Worth, which is 316 miles, without any reason shown in the record, is a carriage without charge. While many other considerations than distance may be considered in determining what shall constitute a proper rate, yet in this case nothing is shown to justify the apparent discrepancy of charge, and it is believed to work an undue preference to Michigan salt over Kansas salt going to Texas and southerly points.

[1] 5 I. C. C. Rep. 299; 4 I. C. R. 33.

It can hardly be disputed that here is a disadvantage brought about to the Kansas, and a preference given to the Michigan salt, both undue and unreasonable. . . . We see nothing in the situation, as proven, which can be given as a valid reason for not putting the Kansas salt fields in possession of all these natural advantages in the territory traversed by these lines. We think that in all this territory where the Texas points are as near to Hutchinson as to St. Louis, the Kansas salt should, by a rearrangement of rates, be carried for an equal charge and where Hutchinson is nearer than St. Louis, the Kansas salt should have the reasonable advantage of its proximity to the market.

The danger that such a rearrangement of rates would give to Kansas salt producers monopolistic power, enabling them to raise the price of salt to Texas consumers, seems to have been forestalled by the Commission's discovery that the productive capacity of the Kansas salt fields was "practically unmeasured, and probably equal to any demand that is likely to exist for the product."

In the case of the *Colorado Fuel and Iron Company v. The Southern Pacific Company et al.* [1], complaint was made that a rate of $1.60 per 100 pounds on certain iron and steel products shipped from Pueblo, Colorado, to San Francisco was unfair and unreasonable when compared to the rate of 60 cents or less per 100 pounds on the same iron and steel when shipped to San Francisco from Chicago and from Mississippi and Missouri river points. Many considerations, such as cost of service, competition by water, value of commodity, and social considerations, played a part in the discussion and affected more or less the decision of the Commissioners. On the whole, however, the discrimination was shown to be due primarily to a desire on the part of the carriers to equalize the natural disadvantages of location held by eastern producers of iron and steel with reference to the

[1] 6 I. C. C. Rep. 488.

western markets. This method of rate making did not, of course, commend itself to the Commissioners, who declared: "The off-setting of natural disadvantages at one place as compared to like business at another, by discrimination in freight charges, is inconsistent with the equality provisions of the statute." Pueblo had certain disadvantages for producing and shipping steel, — inferiority of coal and iron ore, high cost of labor, and high terminal charges; but these did not outweigh her natural advantages due to location. As a result, a large iron and steel industry had sprung up the financial success of which was in large measure dependent on its ability to retain its advantages over its competitors in the western markets. This natural advantage due to less distance the Commission concluded the Pueblo company had a right to retain. After allowing for the greater terminal expenses, when compared with the distance the commodities were hauled, it was decided that

> the rates from Pueblo to San Francisco should not exceed 45 cents per 100 lbs. on steel rails and railway fastenings, or 37½ cents per 100 lbs. on bar iron, cast iron water pipe, etc., nor should the rates from Pueblo to San Francisco on such traffic or on other iron and steel articles be greater at any time than 75 per cent of rates contemporaneously in force on like traffic from Chicago to San Francisco over any of the different roads.

The basing-point system of rate making generally followed in the southeastern section of the country affords numerous examples of discrimination against the shorter distance points. The Commission has justified these discriminations wherever active water competition has seemed to compel lower rates to the long distance points, and it has also been compelled by court decisions to uphold these discriminations wherever active rail competition has proved a potent factor. But the Commission has acted very un-

willingly in so deciding, and it has thrown upon the carriers the responsibility of showing that circumstances and conditions were so dissimilar as to warrant the lower charges to the long distance point.

In the *Cordele Machine Shop case* [1] the Commission decided that the fact that the more distant point was a greater producing and distributing center might be due to no natural advantages possessed by this place but merely to the fact that it was arbitrarily made a favorite by the carrier.

In the *Hampton, Florida, case* [2] the carriers had been charging rates to that city which were made up of the through rate to Palatka, a point beyond Hampton, plus the local rate back to Hampton. Water competition at Palatka was said to control the rate at that point but this the Commission did not find to be the case, and it declared that under the circumstances the basing-point system of rate making was unfair to surrounding localities because the effect of such a system

> is to enable the basing-point merchants to compete with the local merchants at their own doors on equal terms, while the latter are debarred from such competition with the former, and as to territory intermediate between the basing points and surrounding localities merchants at the basing points are given such an advantage in rates as to enable them to undersell merchants at surrounding localities and drive them out of the jobbing business in such intermediate territory.

3. *Group rates*

No cases which have come before the Commission better illustrate the application of the principle that a place is entitled to the advantages of its geographical location but is not entitled to push this claim beyond

[1] Cordele Machine Shop v. L. & N. R. R. Co. et al., 6 I. C. C. Rep. 361.

[2] Board of Trade of Hampton, Fla. v. N. C. & St. L. R'y. Co., 8 I. C. C. Rep. 503.

the bounds set by cost of service, than do those cases which deal with group rates, that is, rates which are common to all points within a given area which are reached by the same lines, irrespective of their distance from the basing point. Such a system of rate making is exemplified in the zone tariffs of Austria and Hungary, where the principle of group rates may be said to have found its logical application.

In one of the earliest cases [1] of this sort heard by the Commission it was shown that the carriers were in the habit of making uniform rates on milk transported to New York from points on their lines which were situated at distances varying from 21 to 183 miles from the point of destination. The complainants urged that in this way undue preference was given to the more remote points, inasmuch as the amount of service rendered to these places was greater than that given to the points nearer the market altho the charge was made the same for all. The complainants were apparently seeking to make use of the value of service principle which the Commission had already declared to be the fundamental principle in rate making. Unfortunately for their cause, the complainants in their brief made the following admission with reference to the costs of conducting the business of transporting milk: —

> It will be observed that the character of the service rendered is the same and every element which goes to make up the expense account of the railroad for performing this service is identically the same whether the milk is taken to its cars 183 miles from New York or 21 miles from New York, except in the length of the haul.

This admission the Commissioners took advantage of to bolster up their decision that the group rate

[1] N. W. Howell et al. v. N. Y., L. E. & W. R. R. Co. et al., 2 I. C. C. Rep. 272; 2 I. C. R. 162.

was justifiable in this case, since the greater part of the expense of transporting milk by special trains was independent of distance.

> The special equipment and trains, the extra labor and cars, the terminal services and supervision, are all employed upon the milk business as a unity . . . and it may well be doubted whether the length of the haul establishes in this case any very material difference between the expenses at the different localities.

The Commission's decision was accordingly made to rest on the basis of cost of service; and the case would have been treated under this heading were it not for the fact that in a later case the Commissioners shifted their ground and, altho they did not admit that there was any inconsistency, practically reversed their decision.

In the later case [1] much the same situation was revealed, but in this instance the blanket rate on milk and cream shipped by special milk trains applied to all places within 335 miles from New York by some of the defendant lines. The complainants were careful not to weaken their case as they did in the former instance by admitting that the cost of service was practically the same from the more distant points as from those near at hand. On the contrary, they declared that the rates

> are purely arbitrary and are not at all grounded upon the distance of the terminal from the shipping points, nor based to any extent upon the value of the products carried or upon the cost of carriage to the defendants, or upon any special service rendered.

They also declared that the milk rates were higher than for other farm products whose character was the same and whose costs and risks of transportation were greater. Yet the real burden of their complaint,

[1] Milk Producers' Protective Association v. D. L. & W. R. R. Co. et al., 7 I. C. C. Rep. 92.

tho it was not boldly stated, was that the blanket rate took from those shippers who lived near New York their geographic advantage of situation near a market.

The defendants in their answer laid stress on this argument, through an exaggeration of statement, when they alleged that the object of the petition was to create

> a monopoly of the milk business in favor of a limited class of shippers by securing lower rates to them than are granted to more distant shippers, the practical effect of which will be to drive the latter out of business and thus enable the petitioner and those it represents to secure higher prices from the consumers.

The carriers presented a strong argument in support of the group rates on milk, which they contended were better for consumers as well as producers than were rates based on distance.

The Commissioners made an elaborate investigation of the facts concerning the distances of the various milk-shipping stations from New York and the amounts of milk shipped from each station, of the methods of packing milk and the cost of moving the milk traffic, of the amount of milk handled by each line and the rates charged on other farm produce. The result was that they decided against the continuance of the blanket rate on milk from all points within 335 miles, altho they still upheld the principle of group rates. In place of the one uniform rate from all points on the defendants' lines they suggested the following method of grouping: First group, all places within 40 miles of the terminal, with a uniform rate of 23 cents per can (40 quarts) of milk, and 41 cents per can of cream. Second group, all places from 40 to 100 miles from the terminal, with a common rate of 26 cents on milk and 44 cents on cream. Third

group, all places from 100 to 190 miles from the terminal, with a rate of 29 cents on milk and 47 cents on cream. Fourth group, all places beyond 190 miles from the terminal, with a rate of 32 cents on milk and 50 cents on cream.

This system of group rates, it will be noticed, is quite different from that upheld in the Howell case, where the distances covered by the blanket rate were practically the same as those included in the first three groups of the above classification. The Commissioners maintained that they were guided by the same principles as controlled their decision in the earlier case, and that the situation differed in this respect, "that the addition of new territory has operated to the prejudice of the old." The real difference between the two cases was that in the Howell case the evidence seemed to show that it was necessary for the carriers to collect milk from places as far distant as 183 miles from the terminal in order to secure a supply sufficient to satisfy at moderate prices the demand of consumers in New York City. As long as the milk traffic was confined to this territory all producers within the territory could market their product at prices which yielded a fair profit. When the carriers later extended the milk service and the uniform rate to all places within 335 miles from New York, the effect was to widen the source of supply to such an extent as to make it impossible for all producers within the enlarged territory to dispose of their product. Some of the near-by producers were therefore crowded out of the market by those at a distance. The Commissioners declared it to be the

> duty of carriers to establish rates which will not deprive producers more favorably situated with reference to a dependence upon

that market of part of their trade in a limited traffic, or prevent their supplying their share of the greater demand due to the increase in the city's population or in the consumption per capita. Furnishing an extra perishable article like milk in no greater quantities than is required for daily use in a given city is a business which falls naturally to those producers nearest the city who are able to provide the needed supply.

That the Commissioners were of the opinion that a system of rate making which had respect for the rights of the near-by producers would be in accord with the cost of service principle emphasized in the Howell case is shown by their statement that, "Prudence would influence railroad managers to confine the collection of milk within the territory in which it can be most cheaply handled and to extend the milk system no further than the increase and growth of the demand should require."

We have already[1] given some consideration to the case of the *Commercial Club of Omaha v. Chicago and Northwestern Railway Company et al.*[2] and have seen that a majority of the Commission refused to sanction the demand of the complainants that since Omaha, Nebraska, and Council Bluffs, Iowa, had a group rate to points in Nebraska, they should also have a group rate to points in Iowa. A difference in the cost of service from the two places was given, it will be remembered, as one reason for refusing the demand of the complainants. Another argument which found a large place in the reasoning of two of the three Commissioners who constituted the majority was that jobbers of Council Bluffs were entitled to their natural advantages of location for carrying on the Iowa trade. Their argument was as follows: —

As respects the distributing trade in Iowa it cannot well be denied that Council Bluffs has some natural advantages of location. . . .

[1] See p. 282.

[2] 7 I. C. C. Rep. 386.

If Council Bluffs is more favorably situated with reference to the trade of western Iowa, the carriers are not to be condemned for recognizing that fact in adjusting their charges. It does not necessarily follow that rates should be the same from Omaha and Council Bluffs into Iowa because they are the same from those places into Nebraska. If Council Bluffs has an undue advantage in the matter of west-bound rates, the correction of any resulting injustice to Omaha must be sought in an appropriate proceeding.

This reasoning would meet with more ready acceptance by the student of railway rates had not previous decisions of the Commission already recognized the validity of group rates under circumstances and conditions which leave little room for doubt that its members would have held them applicable, as a general rule, to Omaha and Council Bluffs, had that question been directly before them. Indeed, the argument of the majority in this case shows that they recognized the validity, or perhaps the necessity, of group rates for Omaha and Council Bluffs to and from all parts of the country except to points in Iowa. To permit the continuance of a group rate from these cities to all places except Iowa points, and then to fall back upon "natural advantages of location" as a reason for refusing group rates to points in Iowa seems illogical and it brings up the question as to whether group rates are ever justifiable, — that is, whether they can be given without taking away from certain places their natural advantages of location.

The two dissenting Commissioners in the case did not object to the argument that Council Bluffs was entitled to its natural advantages of location. Their refusal to agree with the majority was due wholly to the fact that they held that the agreement entered into between the roads, "to establish and maintain absolute equality in in and out rates for these towns" did create a claim for the maintenance of this

agreement in respect to Iowa points if it were maintained for other points.

4. *Natural advantages due to competition*

Competition might be thought to create artificial advantages rather than natural ones and doubtless this is true in many instances. There are certain conditions, however, in which a place has an advantage over its competitors owing to the fact that it is so situated by nature as to enjoy the advantages of competing routes. Chicago, situated at the lower end of Lake Michigan, where the railway lines running from the east to the northwest must round the lake, is a notable example of a place naturally located to enjoy competition. In most of the cases involving competition the Commission has rested its decision squarely on the basis of this competition, without endeavoring to show that this was a natural advantage possessed by the competitive point. Accordingly most of these cases considered will be dealt with in a subsequent section of this paper. There are, however, a few cases in which the Commission has seen in a competitive situation a natural advantage which entitled the one town to lower rates than those granted to its rivals.

Two cases [1] in which the city of Sioux Falls, South Dakota, was the real complainant will suffice to illustrate this point, since in the one case the Commissioners found that competition created a natural advantage for one city and in the second case no such natural advantage appeared.

In the first case complaint was made that rates from Chicago to Sioux Falls were unjust and un-

[1] E. J. Daniels v. C. R. I. & P. R'y Co. et al.; E. J. Daniels v. Great Northern R'y Co., 6 I. C. C. Rep. 458.

reasonable as compared with the rates from Chicago to Sioux City, Iowa. The short line route from Chicago was slightly less to Sioux City than to Sioux Falls but both places were well served with railroads connecting them not only with Chicago but also with Duluth, Milwaukee, and other points on the Great Lakes. The Commissioners did not think that under the circumstances the slight difference in distance was a sufficient cause for a difference in the rates to the two cities. They said: —

> Confining the issue to location alone and taking into account only the relation of the carriers to these two towns, we should have little hesitation in prescribing for Sioux Falls substantially the same rates from Chicago as are granted to Sioux City. But . . . other considerations incline us to a somewhat different conclusion.

These other considerations grew out of the fact that Sioux City is situated on the Missouri river while Sioux Falls is not. It had been for a long time the practice of the western railroads to make rates from the east somewhat more favorable to cities situated on the Missouri river than to other near-by points. This practice had its origin in the fact that at one time water competition by Missouri river boats had been a potent element in the determination of railway rates; and, altho this competition by water had almost ceased, the business interests of the Missouri river towns had appeared to be more or less dependent on the maintenance of the old rates and they had accordingly been continued.

The Commission, altho expressing its displeasure with the basing-point system of rate making which gave such a preference to the Missouri river towns, saw no way of correcting the evil without disturbing the entire rate situation in the west and creating commercial disturbances in the Missouri river cities

as well. The only practicable remedy was, therefore, to reduce rates to Sioux Falls. Yet, while they ordered some reduction in the rates to that place, the Commissioners were unwilling to add another to the list of Missouri river towns. The reason for allowing a difference in the rates to the two towns could hardly have been actual competition in the one case which did not exist in the case of the other, for as we have seen the two places seem to be equally favored in this respect; nor could it have been distance, for the Commission ignored the slight difference in the distances. Sioux City's advantage lay rather in the fact that it was a Missouri river town and thus shared in the favors granted by the carriers to those towns.

The peculiar advantage possessed by Sioux City in the above case will perhaps be better understood after a consideration of the second case brought by the Sioux Falls complainant. In this case complaint was made that rates from Duluth were higher to Sioux Falls than to Sioux City, which was 78 miles farther from Duluth. The Commissioners found in this case no reason for a difference in the rates to the two places. " The location of Sioux Falls, its distance from Duluth, and the conditions under which transportation is effected, seem to require as low rates to Sioux Falls as those accorded to Sioux City." In some respects this decision might be regarded inconsistent with the decision in the Chicago-Sioux Falls case; since the later decision would seem to require that rates from Chicago to Sioux Falls be reduced in order to meet the reduction in the Duluth-Sioux Falls route. It did not appear from the Commission's investigations, however, that the Duluth route was an active competitor with the Chicago route for Sioux Falls traffic.

Attention must once more be called to the fact that the natural advantages recognized in this series of cases are always due to differences in cost of production or transportation. The natural advantage possessed by a place may be due to lower costs of production as in the Eau Claire case, or to lower costs of transportation as in the Boston Chamber of Commerce case, or to a combination of these two as in the Michigan salt case. The natural advantage may be due to a shorter distance covered in transportation, in which case lower costs are reflected. Group rates which would tend to annul differences in distance or costs of transportation are justifiable only when these differences are slight and when the group rates do not deprive any of the more favorably located producers of a market for their products; for they have the first claim on that market. Natural advantages which are ascribed to competition are the hardest to explain on the grounds of differences in cost; but in the one case cited it may be said that the preference given to Sioux City was originally due to the fact that she had the advantage of a cheap water route to market, and that even after this water route had been abandoned it continued to furnish potential competition which had been given recognition in the system of rate making.

VI. Competition

The act to regulate commerce was passed by a Congress which was strongly of the belief that competition between railroads was salutary in its workings and was to be fostered. The purpose of regulation was not to thwart competition but to check monopoly. The framers of the act and those who voted for it

may not have rightly understood the nature of railway competition and its effect in producing discriminations, but there can be no doubt that they intended that the act should promote competition between carriers and between places, and that they placed reliance on competition as a rate-making force beneficent in its results.

The members of the Interstate Commerce Commission appointed to carry out the provisions of the act were fully aware of the intention of Congress in this matter, and in good faith undertook to apply the competitive principle to railway rates.[1] This is not the place to enter into a discussion of the ways in which the Interstate Commerce Commission gradually modified its views as to the beneficial effects of competition between railroads and came to the conclusion that competition between carriers could be made an excuse for discrimination between places only in those cases where the lower rates were forced by the competition of carriers not subject to the act to regulate commerce. Nor do we need to explain at length the way in which this tendency of the Commission was thwarted by the decisions of the Federal courts[2] to the effect that competition between the carriers subject to the act might create such dissimilar circumstances and conditions as to warrant their being taken into account by the Commission "as having due regard to the interests of the public and of the carriers."

It is important to note, however, that the difference of opinion between the Commission and the courts concerning the extent to which, under the act, competition might be allowed to influence rates, makes

[1] See the First Annual Report of the Commission, p. 40.

[2] Social Circle Case; 162 U. S. 184. Troy case; 168 U. S. 144.

it uncertain how far the real opinion of the Commissioners is reflected in some of the cases to be considered under the heading of competition. Since the purpose of the present inquiry is to show how a consideration of the economic and social conditions affecting rate making has led the Interstate Commerce Commission to develop certain fundamental principles controlling railway rates, we are less interested in those cases in which the decisions of the Commission have resulted simply from obedience to the orders of the courts. But in many of the cases which have come before it the Commission has of its own volition decided that competition was the controlling factor in the determination of the rates in question. These cases may be classified as follows: (1) Those in which the controlling competition is between carriers subject to and those not subject to the act to regulate commerce. (2) Those cases in which the competition is between carriers subject to the act. (3) Where the competition is between places or between different sections of the country. (4) Export rate cases. (5) Where competition between shippers or between producers is the controlling factor. (6) Where competition is necessary to prevent the growth of monopoly.

1. *Competition between carriers subject to and those not subject to the act*

The act to regulate commerce did not include within its scope carriers engaged in the transportation of passengers and goods entirely by water. And for obvious reasons it could not include those carriers, whether by rail or by water, which were wholly subject to a different political jurisdiction but which nevertheless might at times actively compete with American

railroads for certain kinds of traffic. It was clear that unless the carriers made subject to the act were to be deprived of their fair share of this highly competitive traffic they must be allowed to meet the low rates set by carriers not subject to the act; even if this involved the granting of lower rates on the competitive traffic than were accorded to traffic not competitive. Brief mention will suffice of the cases in which the Commission has upheld rate discriminations which were clearly shown to have resulted from the competition of carriers not subject to the act. The only cases in which the Commission has refused to recognize such competition as a legitimate force controlling rates is where the carrier subject to the act was shown to be the active and not the passive factor, that is, where it was shown to have forced the low rates on its competitors, instead of having had the low rates forced upon it. The Commissioners have also insisted that where a carrier has accepted a low rate on a portion of its traffic because this low rate was forced upon it by competition, the low competitive rate must be high enough to cover the additional costs of handling this traffic. Otherwise it would be necessary to increase the rates on the non-competitive traffic to make up for the loss occasioned by the addition of the competitive traffic.

In the case of *Lehmann, Higginson & Co. v. The Southern Pacific Company et al.* [1], the Commission decided that a rate of 85 cents per 100 pounds on sugar carried from San Francisco to Humboldt, Kansas, was not unlawful, altho only 65 cents were charged for like shipments to Kansas City, Kansas, which was 100 miles farther from San Francisco than was

[1] 4 I. C. C. Rep. 1.

Humboldt. "Actual water competition of controlling force" was shown to have determined the low rate to Kansas City and at the same time it was shown that this low rate afforded to the carrier some revenue above the cost of moving the traffic. The rate to Humboldt on the other hand was shown to be not unreasonable and to be even lower than it would have been except for the influence of the competitive conditions at Kansas City.

For the same reasons the Commissioners upheld [1] the practice of the railroads in granting lower rates to the Standard Oil Company on petroleum shipments to certain points in California from the oil fields in Pennsylvania and Ohio than were granted to the Standard's competitors located at intermediate points on the railroads. Competition of part-rail and part-water lines and of part-pipe and part-water lines existed in case of the Standard's product which did not exist in case of its competitors.

Water competition of "controlling force" was held to justify [2] carriers in charging less on traffic sent from New York City to Memphis, Tennessee, than to Chattanooga in the same state. Lower rates to Nashville than to Chattanooga were not upheld because the Commission did not believe that water competition at Nashville was sufficient to compel the low rates to that point. The United States Supreme Court refused [3] to enforce the order of the Commission with reference to the Nashville rate and on a rehearing [4] of the case the Commission

[1] George Rice v. A. T. & S. F. R. R. Co. et al., 4 I. C. C. Rep. 228.

[2] Board of Trade of Chattanooga v. East Tenn., Va. & Ga. R'y Co. et al., 5 I. C. C. Rep. 546.

[3] 181 U. S. 29.

[4] Chamber of Commerce of Chattanooga v. Southern R'y Co. et al., 10 I. C. C. Rep. 111.

decided that " the traffic from New York and other eastern points is carried to Nashville and Chattanooga under substantially different circumstances and conditions "; hence the higher rate to Chattanooga was not unlawful.

In the case of *W. S. King & Co. v. The New York, New Haven, and Hartford Railroad Company et al.* [1], complaint was made that a through rate of nine cents per 100 pounds was given on flour sent from New York to Boston, but to Readville, Massachusetts, eight miles nearer to New York the rate was 18 cents, the sum of the combined local rates to that point. The Commissioners upheld the discrimination against Readville on the following grounds: (1) The low rate to Boston was forced by water competition and was under the circumstances allowable. (2) There was no evidence that the local rates to Readville were in themselves unreasonable. (3) The traffic secured by doing the Boston business at the low rates and which could otherwise not be secured enabled the carriers to " make the local rates considerably lower than they would otherwise be."

With reference to this latter point it may be said that it is difficult to see how the local rates could be made less by means of the revenue derived from the through business, if, as the carriers claimed, the rates to Boston were " but little in excess of the actual cost of doing the work."

The Canadian Pacific Railway, not being subject to the act to regulate commerce, has always been a disturbing factor in the rate situation, particularly in the transcontinental freight and passenger business. The Interstate Commerce Commission when brought

[1] 4 I. C. C. 251; 3 I. C. R. 272.

face to face with the situation created by the competition of this foreign route has declared: [1] —

> The competing American lines must either meet the reduced rates of such foreign carrier or lose their share of the traffic, and they cannot make such reduced rates apply at intermediate points without suffering large loss of necessary revenue.

The Commission has under such circumstances generally relieved the American carriers from the operation of the long and short haul clause of the act in order to enable them to meet the competition for through traffic.

These are only a few of the cases in which competition by carriers not subject to the act to regulate commerce has been held by the Commission to justify carriers subject to the act in lowering their rates at competitive points. Viewed purely as an economic and social proposition, it is at least debatable whether one carrier should be allowed to take traffic from another which can carry it at less expense, but in view of the fact that not all carriers were made subject to government rate regulation, and since it was clearly the intention of the framers of the act to promote competition wherever competition was possible, it is evident that the Commission has pursued the only way open to it in permitting these competitive rates.

2. *Competition between carriers subject to the act*

That competition between carriers subject to the act to regulate commerce could create such dissimilar circumstances and conditions that carriers might feel themselves justified in making it an excuse for departing from the rule laid down by the long and

[1] In the matter of the application of the A. T. & S. F. R'y et al. for a suspension of the fourth section. 7 I. C. C. Rep. 593.

short haul section of the act, was quite foreign to the minds of the Commissioners during the early years of their service. As explained in the Commission's Seventh Annual Report,[1] the Commission had held, prior to the decisions of the Federal courts placing a different interpretation upon the language of the fourth section of the act, that "the only railroad competition which may justify carriers in fixing rates contrary to the long and short haul principle was in 'rare and peculiar cases'."

The decision of the United States Supreme Court in the Troy case (168 U. S. 144) compelled the Commission to admit that competition between carriers subject to the act was a factor which must be taken into consideration in determining the reasonableness of a given rate. Many of the later cases coming before the Commission are decided, therefore, on the principle that the rates in question are made necessary by the competition of other roads. As already stated, these cases are of less value to us in our search for economic principles than those in which the decision was not forced upon the Commission, and for that reason we shall give them scant attention. We must not, however, fail to note those "rare and peculiar cases," in which the Commission, on its own initiative, has decided that competition between carriers subject to the act is a controlling factor in the determination of a rate.

In the first case[2] of this sort to be considered, application was made by a carrier to be relieved from the operation of the long and short haul clause during the progress of the Columbian Exposition in Chicago in 1893. This carrier had in connection with other

[1] P. 33.

[2] Petition of C. H. & D. R. R. Co., 6 I. C. C. Rep. 323.

carriers established a through passenger service to Chicago from Lima, Dayton, and other points in Ohio. The distance from these places to Chicago by the combination route was much greater than the distance by direct and competing lines. The petitioner therefore desired to be allowed to meet the rates of its competitors to Chicago without reducing the rates from intermediate and non-competitive points. The Commission granted the petition, and in so doing said: —

> In the case under consideration it is shown that additional transportation facilities and accommodations for passengers travelling from Lima through Dayton to Chicago and return, during the World's Fair Exposition, are necessary to the convenience and safety of travellers to and from the Exposition. The petitioner has made provision for such increased facilities by establishing a new route which can only be utilized by the acceptance of the lower rate from Lima, $9, which has been established by a competing carrier having a more direct route. . . . It also appears that this lower rate will yield to the petitioner something more than the cost of the service.

Other cases of the same sort have frequently arisen where a carrier having a long and circuitous route has desired to enter into competition with a carrier having a more direct route but has felt unable to make the rates at intermediate points as low as at the competitive points. When application has been made to the Commission for relief from the fourth section, the petition has usually been granted,[1] provided the petitioners were able to show: (1) that the circuitous route had not forced the low rate but that it was forced upon it; (2) that the low rate at competitive points would yield to the carrier some net revenue, that is, something more than the costs of handling the traffic; (3) that the rates at the in-

[1] See for illustration petitions of C. & E. I. R. R. Co., and of D. L. & W. R'y Co. Commission's Eleventh Annual Report, pp. 102–103.

termediate points were not unreasonable, and that they would not be raised; (4) that business interests along the line would be promoted by allowing such competition.

Since November, 1897, when the Supreme Court in the Troy case decided that competition between carriers subject to the act might create such dissimilar circumstances and conditions as to warrant a greater charge for a short than for a long haul, there have been many cases in which the Commission has given competition between railroads as a reason for upholding certain rates brought in question before it. In some of these cases it is evident that the Commission is merely following the precedents established by the courts. In other cases it is not so clear that the Commission is not expressing the opinions of its own members in regard to the influence which competition between railroads may properly exercise on rates. The Commissioners at times have adopted a line of reasoning which seems to show that even without the guidance of the courts they would have given much weight to railway competition as an influence tending to establish fair and reasonable rates. One or two references to some of the later decisions will make this point clear.

In the case of the *Mayor and City Council of Wichita v. The Atchinson, Topeka & Santa Fe Railway Co. et al.*[1], complaint was made that the city of Wichita, Kansas, was being unjustly discriminated against because on grain intended for export the rates to Galveston, Texas, from Wichita were higher than from Kansas City, Missouri, which was a more distant point. It was also claimed that the Wichita rate was in itself unreasonable.

[1] 9 I. C. C. Rep. 534.

The Commission discovered that conditions at Kansas City made the rates from that point highly competitive, since grain intended for export was sent by several routes, to Atlantic as well as to Gulf ports, and these rates had long been the resultant of this active competition. They were, therefore, beyond the control of the defendant carriers. Under the circumstances the rates from Kansas City to Galveston were all that the tarriff would bear, while the Wichita rates were not subject to such highly competitive conditions. The Commissioners believed, however, that the discrimination against Wichita was too great and that rates from there to Galveston were excessive to the extent of two cents per 100 pounds. In rendering their decision to this effect the Commissioners paid some attention to cost of service and to other considerations, but in the main their opinion was based on the fact that competition had tended in the long run to establish a rate of $28\frac{1}{2}$ cents per 100 pounds from Wichita to Galveston and this rate must therefore be regarded as a reasonable one. Their argument was as follows: —

> One test of a reasonable rate is to inquire what has been the result of competition between different carriers; when several different lines of railway could, and did bid for the same traffic, at what price have these carriers transported that traffic? Where such competitive conditions, operating through several years, have settled down into a certain rate, we think that fact is of great weight. Now in the case before us competition, after being subjected to all the restrictions then possible, resulted in an actual rate from Wichita not exceeding $28\frac{1}{2}$ cents on the average. While not conclusive, this is certainly important in attempting to determine what is a reasonable charge.

This statement, which seems to place implicit confidence in competition as a force tending to establish reasonable rates, is not the only one which might

be cited in support of this point of view. Generally speaking, whenever the Commission has upheld "a long existing rate" (and such cases are frequent), the decision has apparently rested on this view concerning the permanent results of competition.

Another application of the doctrine that differences in rates may sometimes be justified by differences in competitive conditions is found in the case of *Weil Brothers & Company v. Pennsylvania Railroad Company et al.*[1] The question raised was whether it was lawful and just to charge 62 cents per 100 pounds for transporting "wool in the grease" from Philadelphia to Fort Wayne, Indiana, when at the same time a rate of 43 cents per 100 pounds was given on the same commodity transported in the other direction. The Commission upheld the difference in rates on the following grounds: —

> A great and increasing volume of freight is a factor of much influence towards the depression of rates. The great volume of freight from the west produces a competition to secure the traffic which, with the facilities provided for its handling, serves to secure . . . a rate to the seaboard which may not be taken as a fair measure of rates on the same commodities in chance shipments in the opposite direction.

Altho it does not fall within the class now under discussion it is interesting to note here that another case[2] was decided by the Commission within three weeks of the time when the case just quoted was settled, in which the decision rested on precisely the opposite grounds. The question involved the right of carriers to charge higher rates on screen doors shipped from Fenton, Michigan (near Detroit), to Winsooki, Vermont, than were charged from Winsooki

[1] 11 I. C. C. Rep. 627.

[2] The A. J. Phillips Company v. G. T. W. R'y Co. et al., 11 I. C. C. Rep. 659.

to Detroit. The Commission gave the following reason for allowing the discrimination to continue: —

> To a considerable extent the bulky products of the west require for their transportation equipment in excess of that necessary to the carriage of west-bound freight, so that there is a greater movement of empty cars under lighter power westward, which increases the expense of transportation to the carriers. . . . Some disparity, therefore, between the rates on east-bound and west-bound traffic seems to be justified by the conditions resulting from the empty car movement in one direction.

Here it is evident that cost of service is the controlling principle. The Commission seems unaware of the inconsistency between these two decisions.

3. *Competition between places or sections*

Competition between places or sections is frequently more intense than that between carriers and is, indeed, not seldom the cause of the latter. The desire to preserve competition between places has, however, at times been used by the Commission as an argument for restricting within certain limits the competition between carriers. Most of the cases in which this attitude has been taken have arisen since the decision of the Supreme Court in the Troy case and doubtless the Commission's decisions have been considerably affected by the ruling of the Court.

A case which affords a good illustration of this sort of competition is that of *The Wilmington Tariff Association of Wilmington, North Carolina, v. the Cincinnati, Portsmouth, and Virginia Railroad Company et al.*[1] The city of Wilmington had long served as a distributing center to many interior towns of North and South Carolina not only for goods imported by water, but likewise for goods brought from the west. Through a readjustment of freight rates

[1] 9 I. C. C. Rep. 118.

made by the eastern trunk lines, Wilmington's chief competitors, Norfolk and Richmond, Virginia, were given rates from the west much lower than had hitherto prevailed, — rates which were substantially the same as were given to Baltimore, Maryland. Water competition at all these points was made the excuse for the lower rates. Water competition of the same sort existed at Wilmington, but it obtained no recognition from the railroads and the higher rates by rail to that port remained in force. As a result of this change in rates Wilmington steadily lost ground as a distributing center and was being gradually supplanted in this trade by Norfolk and Richmond. This was especially true in the case of such traffic as originated at St. Louis or Chicago or at points west of those cities. So far as the traffic originating at Ohio river points, like Cincinnati and Louisville, was concerned, the relation of rates to Wilmington and Norfolk seemed to the Commission to be fair and reasonable. For traffic originating at points beyond the Ohio river and billed to Wilmington, the carriers were found to be charging the full local rates to the Ohio river cities plus the through rates from Cincinnati or Louisville to Wilmington. In case the traffic was billed to Norfolk or Richmond the western roads accepted as their share of the through rate from Chicago or St. Louis less than the local rates to Ohio river points, so that this made the total through rate less for Norfolk and Richmond than for Wilmington.

The Commissioners believed that the readjustment of rates had unjustly discriminated against Wilmington. In their decision, they said: —

After giving the case most careful study, and keeping in view the rights and just interests of all concerned, we see no escape

from the conclusion that the present adjustment of rates which operates largely to deprive Wilmington as a competing point for wholesale distribution of the benefits of such great primary markets as Chicago and St. Louis and limits her to such intermediate points of supply as Cincinnati and Louisville (from which the related rates appear to be fair and reasonable), subjects Wilmington to prejudice and disadvantages which are in substantial degree undue and unreasonable; that the carriers operating the defendant through lines are to that extent responsible and that the regulation provided for in the Statute should be applied to remove and prevent these wrongs.

Competition between carriers was claimed[1] by the Southern Railway as an excuse for granting lower rates to and from Lynchburg, Virginia, than were accorded to Danville in the same state, the two towns being rival distributing centers. The argument of the defendant may be analyzed as follows: (1) Competition of the trunk lines leading to the Atlantic seaboard has resulted in the establishment of a very low rate to Baltimore. (2) The Chesapeake and Ohio Railway, in order to develop an export business for its own line at Norfolk, has given the same rates to Norfolk as were given to Baltimore. (3) Lynchburg, being an intermediate point on the Chesapeake and Ohio and on the Norfolk and Western Railway, has been given the same rates as were given to Norfolk, in order that the long and short haul clause of the act to regulate commerce may be observed. (4) In order to share in the Lynchburg traffic the Southern Railway is obliged to meet the low rates established by the other roads. (5) Danville does not possess the same competitive situation as Lynchburg and therefore the Southern Railway did not reduce rates to Danville at the time it entered into competition with other roads for the Lynchburg traffic. Nor is it bound to do so, since the United States Supreme

[1] City of Danville et al. v. Southern R'y et al., 8 I. C. C. Rep. 409.

Court has held in the Troy case that competition between carriers may create such dissimilar circumstances and conditions as to warrant them in making lower rates to the long distance competitive points than to the short distance non-competitive ones.

To this argument the Commission replied as follows: (1) The low rates to Norfolk are not due wholly to the competition at Baltimore but "the two rates have mutually interacted. The Norfolk rate may have operated to reduce the Baltimore rate quite as frequently as the reverse." (2) The Chesapeake and Ohio Railway is not alone responsible for the low rates to Lynchburg and Norfolk and these low rates have not been forced on the Southern Railway. On the contrary, the low rates to these cities are the result of active competition in which the Southern Railway has shared. "It cannot be found as a fact that the Southern Railway has simply accepted the rates named by its competitors." (3) Competition by rail formerly existed at Danville and has been ended only by a consolidation of the competing lines under the Southern Railway.

In announcing its decision to the effect that rates to Danville were too high, the Commissioners declared that the Southern Railway in establishing rates much higher to Danville than to Lynchburg had consulted only its own interests, not those of the public. In offering as an excuse for this discrimination the existence of railway competition it did not consider at all the nature of the competition between the cities of Lynchburg and Danville, but it had on the contrary by means of a consolidation of competing lines destroyed "the competitive advantages which the enterprise of [Danville's] citizens in one way or another had secured." The Commission continued: —

Danville is situated 66 miles south of Lynchburg. It is in competition with Lynchburg. Now these carriers have no right to put in effect a system of rates which prohibits the city of Danville from transacting business in competition with the city of Lynchburg. . . . Rates to Danville must be adjusted with relation to competitive localities like Lynchburg.

The Commission therefore recommended a reduction of rates to Danville. It did not, however, recommend that the rates be made as low as those to Lynchburg. While fully convinced that the location of Danville and the competition of carriers which had formerly existed at that point required that rates to that city be reduced, the Commissioners were sufficiently impressed with the showing made by the railroads as to the more active competition at Lynchburg to cause them to hestitate to recommend that equal rates be given to the two cities.

Pursuing a similar line of argument to that employed in the Wilmington and Danville cases, the Commission, in what is known as the *St. Cloud case*,[1] refused to admit the right of a carrier having a long and circuitous route from Duluth to St. Paul, Minnesota, to enter into competition for traffic between these two points unless the carrier was prepared to make the rates as low to intermediate points. The defendant claimed that it was merely meeting the existing rates at St. Paul established by its competitors, but the Commission replied that the moment it entered into competition for traffic between Duluth and St. Paul " it became a factor in the determination of that rate." The long route would not be satisfied with the small amount of traffic which would go to it if it merely met rates established by shorter lines but would seek to attract additional traffic by lowering

[1] George Tileston Milling Co. v. Nor. Pacific R'y Co., 8 I. C. C. Rep. 346.

its rates and would thus discriminate still further against the intermediate points.

The defendant also declared that the existing rate at St. Cloud, the intermediate point, was " reasonable in and of itself," but the Commission replied: —

A rate can seldom be considered in and of itself. It must be taken almost invariably in relation to and in connection with other rates. The freight rates of this country both upon different commodities and between different localities are largely interdependent, and it is the fact that they do not bear a proper relation to one another, rather than the fact that they are absolutely either too low or too high, which most often gives occasion for complaint and which is the ground for complaint here.

If we look at this case not from the legal standpoint but from that of the broader economic and social interests involved, the most obvious objection which can be made to permitting the long and circuitous route to share in the flour traffic between St. Paul and Duluth is that this would be an unnatural and needlessly expensive method of transportation. Altho the Commission did not make this the basis of its decision it did refer to the matter in these words: " Wasteful competition by circuitous routes is to the disadvantage of railways as a whole, for ultimately there must be some relation between rates and the actual cost of transportation."

In the case of *F. J. Hoerr v. Chicago, Milwaukee, and St. Paul Railway Company*,[1] the Commission held that competition between markets and between producers may compel low rates at competitive points in which near-by non-competitive points may share, altho they are not entitled to rates as low as those given to the competitive points. In this case, the complainant, located at Mankato, Minnesota, claimed that on potatoes shipped to eastern cities he was

[1] 11 I. C. C. C. Rep. 547.

entitled to rates as low as were given to shippers at St. Paul, 100 miles further distant, where a through rate was in force. The defendant carrier, on the other hand, insisted that the St. Paul rate was due to competitive conditions which did not exist at Mankato and that the absence of this competition at Mankato " absolves it from its obligations to maintain the relation in rates between St. Paul and Mankato which ordinarily obtains." The Commission did not accept either argument in full. It declared that

> if Minnesota-grown potatoes are to compete with others upon the Atlantic coast, a distance of about 1300 miles . . . and compete at the end of the haul with a similar commodity produced much nearer the point of consumption, [they] must of necessity be given a rate of transportation which is lower than the ordinary class rate established for much shorter distances. . . . If potatoes marketed at St. Paul cannot compete in the east without a low rate, the same thing is true of potatoes when marketed at Mankato.

In order to do " substantial justice " to the complainant, however, the Commission decided that it was not necessary to make the rate from Mankato as low as that from St. Paul since

> there were competitive conditions at St. Paul which did not obtain at Mankato. . . . These rates are the outgrowth of a variety of competitive conditions, of market competition, of competition upon the Atlantic seaboard, and of competition at St. Paul. Some of these competitive forces act equally in case of both St. Paul and Mankato. Some apply mostly to St. Paul. In some the defendant is an important factor, and in some it is not concerned.

The Commission accordingly decided that a rate at Mankato 4 cents per 100 pounds higher than at St. Paul would work substantial justice to all parties concerned.

The competition which has thus far been considered and which has been held by the Commission to be of " controlling force " in determining rates has been either that between carriers or that between places.

In some instances the competition between carriers has been opposed to that between places and the Commission has been obliged to decide which form of competition should be allowed to continue. A form of competition far more intense and more difficult to regulate is that which results when an alliance is formed between a place or a section of the country and the carriers serving that place or section, and these allied forces then enter into a contest for traffic with other cities and other carriers which also have united forces. The best illustration of this intensified competition is that which has for years existed between the Atlantic port cities and the carriers leading thereto for the export traffic of the country. The development of the export rate controversy before the Commission and the latter's efforts to find a solution for it will be discussed in the concluding article of the series.

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